

charged with the principal only of this mortgage debt, the cash balance in his hands (treating this principal as cash,) was only \$5761 90, and that is the amount for which she receipted to him as cash. There was, however, at that time a large sum due for interest, sufficient, perhaps, to cover the difference between the cash balance with which the executor stood charged, and the principal of the debt; and if so, he should have paid to her the entire principal; because in that event, such payment would not have made him a creditor of the estate, as for an over payment. If when the proper accounts are stated, it shall appear, that throwing this mortgage out of view altogether, Mr. Williamson has over-paid the estate: that is, if the assets which came to his hands, independent of the mortgage, are insufficient to cover his disbursements and allowances, excluding the sum of \$5761 90, appearing by the account to have been paid to his wife, but which in fact was not paid, he must be regarded as a creditor for such excess, and Messrs. Miller and Mayhew, as his assignees, will, in respect thereof, be entitled to be paid out of the proceeds of the sales in this case. The residue of said proceeds, must, according to the decision of the Court of Appeals, in *Evans et al. vs. Iglehart et al.*, 6 *Gill & Johns.*, 162, be invested in some safe and productive fund, so as to secure the interest to Mrs. Williamson during her life, and the principal after her death to the legatees in remainder. And the case will be referred to the Auditor, with directions to state an account or accounts in conformity with this opinion, preparatory to a final decree.

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S. T. WALLIS and F. K. HOWARD for Petitioners.

WM. F. FRICK for Miller and Mayhew, Respondents.